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# Primary Responsibilities of a Guardian of the Estate of a Disabled Adult in Illinois in 2021

by Steve Raminiak, Esq.

*This article provides general information about Guardianship of a disabled adult in Illinois. For legal advice about your particular circumstances, please consult with an attorney.*

*I intend to update this article near the end of every year. If you are reading this article in 2023 or beyond, please search for me, Steve Raminiak, on the internet and my website will provide you with the most recent version of this article.*

The purpose of this article is to inform a Plenary Guardian of the Estate about his/her primary obligations. However, since most Chicagoland jurisdictions require a Guardian of the Estate to maintain legal counsel, and since certain information could be used to engage in crime or exploitation, this article occasionally refers Guardians to their own attorneys. [Click here to see my companion article about the primary responsibilities of a Guardian of the Person.](#) However, this article cannot be exhaustive as every Disabled Person's needs are somewhat different. Also, if a Limited Guardian is appointed, that Limited Guardian's duties are restricted to those specifically mentioned by Court Order. Be sure to consult with your attorney about your specific circumstances. This article presumes that a Plenary Guardian, without any limitation, has been appointed.

As Guardian of the Estate, you are now an officer of the Court who is obligated to manage the Disabled Person's assets frugally and to apply all of his/her financial resources for his care, comfort, and support, within certain limits.

## *I. Application for Benefits*

If no Guardian of the Estate has been appointed, then you are required to apply for all public and private benefits available to the Disabled Person (including but not limited to Social Security benefits, Medicaid or Medicare (as appropriate), Department of Healthcare and Family Services benefits, the State of Illinois' "Circuit Breaker" program) and to gather all eligible disbursements of social security payments or certain other income for the Disabled Person's best interests. The following websites may be of assistance with this: <https://www.benefits.gov/categories>, <https://www.benefitscheckup.org>, or <https://www.usa.gov/benefits>.

As Guardian, you must either become the representative payee for the Disabled Person's Social Security benefits or assign such payments directly to the facility where s/he is residing.

If the Disabled Person, or his/her spouse, is a veteran, contact the Veterans Benefits Administration regarding whether s/he is eligible for additional funds or benefits. Information is available online at <http://www.vba.va.gov/>.

If the Disabled Person has developmental disabilities, you can locate your local Independent Service Coordination Agency (ISC) at <https://www.illinois.gov/dd/Pages/SignUp.aspx>. ISCs are non-profit organizations which are licensed by the State of Illinois to provide assessment and other services. Most notably, your ISC can assist in the completion of a Prioritization of Urgency of Need for Services (PUNS) assessment, which may ultimately result in additional benefits for the Disabled Person. PUNS is a database of Illinois infants, children, adolescents, and adults with developmental disabilities who have a need for developmental disability services or supports. While completion of a PUNS assessment does not guarantee services, it does make sure that the State is aware of the Disabled Person's individual need for services. Possible benefits provided by the State of Illinois after completion of a PUNS assessment may include in-home supports, respite care, job coaches, residential living arrangements, and adaptive equipment.

Private agencies or certain attorneys may help you identify all other possible State and Federal sources of potential benefits available to the Disabled Person. Feel free to contact me for a referral.

## *II. Marshalling and Investing Assets*

As Guardian of the Estate, you have the duty to take charge of all of the Disabled Person's assets, and manage those assets in Guardianship accounts. Consult with your attorney as to how to do so.

Cancel the Disabled Person's credit cards and other obligations, as appropriate, then ask for reimbursement for prepaid items. Forward all mail for the Disabled Person to your address.

Illinois law generally allows a Guardian to invest a Disabled Person's funds in traditional investments, including CD's, stocks and mutual funds. However, consult with your attorney as to how you plan to invest the assets prior to doing so.

Do not use a Guardianship account to hold gifts intended to be used by the Disabled Person after s/he gets better. Such gifts may disqualify the Disabled Person from receiving certain benefits. Similarly, do not place assets in joint tenancy with the Disabled Person (e.g., do not create a joint savings account), as such ownership could also disqualify the Disabled Person in regards to certain benefits. If you wish to set money aside for the Disabled Person, please contact your attorney as to how that can be done.

You must **never** use any account to hold money or assets that belong to or both you and the Disabled Person, without Court authorization. Further, the Disabled Person should **never** have any interest or involvement with any asset that belongs to you, personally, without the knowledge and consent of the Court. If you are the Guardian for more than one Disabled Person, you must **never** commingle, connect or join their assets in the same account. If you are aware of any asset which might fit into any of these categories, please tell that to your attorney.

### III. Inventory

After you have identified all of the Disabled Person's assets (e.g., bank accounts, real estate, vehicles), expectancies (e.g., social security or pension payments) and causes of action (e.g., lawsuits which may or may not have already been initiated), you are required to inform the Court about them by presenting an "Inventory" of these items to the Judge within about 60 days of your appointment as Guardian.

This Inventory will list such items as they existed on the date that you became Guardian (and NOT any later date). Please provide your attorney with statements from the month that you were appointed as Guardian from each of the Disabled Person's banks or financial institutions. Please assess all sources of income (e.g., social security, pension, annuities, etc.), and provide your attorney with documents that describe that income. A sample Inventory can be found in materials that I produced for a seminar at: <https://www.cvlis.org/2018/05/09/inventories-and-accounts-for-minors-disabled-persons/>.

### IV. Bond

In most Chicagoland jurisdictions, a Guardian of the Estate is required to have a Bond from a Surety corporation. In this case, a Bond acts as an insurance policy which insures the Estate against any bad acts which could be committed by the Guardian.

Please consult with your attorney as to how the Bond premium is calculated. Bond premiums are paid annually. Minimum bond premium is about \$100.00 per year. Upon your appointment as Guardian, an initial Bond was entered. This Bond may be increased or

reduced with the presentation of an Inventory, which more specifically describes the Disabled Person's assets and expectancies.

### *V. You Should ONLY Spend or Disburse Funds with the Authorization of the Court (For Example, With A Court-Approved Budget)*

The Guardian is **personally responsible** for absolutely every debit, expenditure, or disbursement from the Estate. The Court regularly reviews what the Guardian has done with the Disabled Person's assets and income. The Court can require you to reimburse the Disabled Person, and remove you from your role as Guardian, if you do not act within the Court's expectations.

To best protect Guardians from scrutiny, I recommend the preparation of a Budget. This Budget itemizes regular expenditures on a monthly basis, for which the Guardian can seek the Court's approval in advance. Take a moment and make a list of all of the Disabled Person's monthly and yearly expenditures. Consider costs for rent/mortgage, insurance, real estate taxes, utilities, seasonal maintenance (e.g. lawn mowing, exterminator, etc.), groceries, caregiving services, medical services, prescription drugs, therapy (e.g. counseling, physical therapy, etc.), travel, and recreational activities. Feel free to add any additional items that you feel are appropriate. When presenting the Budget to the Court, you must seek the approval of a specific dollar amount for each item (e.g. \$400/month for groceries).

Further, you should first obtain the authorization of the Court before you allow a major change in the Disabled Person's assets, or a large unusual expenditure, including but not limited to, buying, selling, leasing, pledging or mortgaging any real estate or personal property; buying or selling any expensive personal property; declaring bankruptcy on behalf of the Disabled Person; hiring any other attorney for the Disabled Person; writing a Will for the Disabled Person; making loans of any amount from the Disabled Person's assets.

Do not even pay your attorney or the Guardian ad Litem (GAL) with the Disabled Person's assets until a Court Order authorizes you to do so. The GAL and all other lawyers will have the opportunity to present petitions for their legal fees and costs to the Court at appropriate times.

You may not make gifts or donations to any person or organization without the approval of the Court (e.g., even if the Disabled Person regularly gave \$100.00/week to a church, you may not continue to do so without Court authorization). Please alert your attorney if this comes up.

Again, the Court may require you to reimburse the Disabled Person out of your own pocket for money which is disbursed without the Court's prior permission. The Court can also terminate your position as Guardian and appoint someone else as Guardian (including a State agency) if the Court believes that you have mishandled the Disabled Person's funds. Please work closely with your attorney regarding your activities.

## *VI. Accounts (also referred to as Accountings)*

Every year, you will be required to present an annual Accounting to the Court that describes all income and all disbursements from the Disabled Person's assets. The Court requires a specific listing of each individual expense, including the date of the expenditure, the person or organization who was paid, and the reason for the payment. The Court also requires a similarly detailed description of all income. A sample Accounting can be found in materials that I produced for a seminar at: <https://www.cvlis.org/2018/05/09/inventories-and-accounts-for-minors-disabled-persons/>.

This Accounting must be prepared according to a very specific format which is different from common practices used by tax accountants. To generate this Accounting, your attorney will need to see every statement from every financial institution that holds the Disabled Person's assets, starting with the month that you were appointed as Guardian. Place each statement that you receive throughout the year into a folder. Arrange for your bank to include copies of all cancelled checks on the statements associated with the Estate's primary checking account. On each statement, be sure to mark any unusual expenditure (i.e., any expenditure that generally does not occur every month or is not explained by a copy of a cancelled check), so that you can easily recall each such expenditure. Next year, your attorney will ask you to provide these statements so that s/he can prepare the Accounting. If you wish, feel free to ask each financial institution to send duplicate statements to your attorney.

You will probably be required to continue to submit Accountings to the Court, on an annual or biannual basis, for as long as you act as Guardian of the Estate. In my experience, the attorney's fees associated with the Accountings can be greatly reduced if the Guardian is willing to assist in drafting the Accounting. For example, when a bank serves as Guardian of the Estate, the bank usually prepares the Accounting at no additional charge to their regular, scheduled fees. In my practice, once we reach the Second Accounting or Third Accounting, I always ask my client if s/he would be willing to provide data entry of relevant information, from which my client can earn about \$25/hour from the Estate, instead of requiring me or my assistants to do similar tasks at a range of \$65/hour to \$275/hour. While the Estate's attorney is required to double-check most data entry, legal fees can be dramatically reduced with such an arrangement.

## *VII. Tax Returns*

Every year, you must also submit annual tax returns for the Disabled Person to the IRS, the State of Illinois, and any other applicable State, as appropriate. Please provide your attorney with the name, address and phone number of the accountant you intend to use to prepare these returns.

## *VIII. Journal of Time as Guardian*

I encourage you to keep a journal of all time that you spend in connection with your role as Guardian as well as all expenses incurred, including all automobile usage. For each entry, record the date, the amount of time spent, and the activity performed. Ultimately, you may

choose to seek reimbursement from the Court for your efforts and such records would be very helpful in that process.

### *IX. Additional Copies of Your "Letters of Office"*

Your "Letters of Office" is the official court document showing your authority as plenary Guardian of the Estate. These "Letters of Office" (which is usually only one page) are certified by the Clerk of the Court as to a specific date. Some institutions will refuse to acknowledge that you are still the Guardian if your Letters of Office were certified many years ago. Additional certified "Letters of Office" can often be obtained by mail from the Court Clerk of the appropriate county in Illinois.

For Cook County Guardianships, you may obtain additional Letters of Office, either in person or by mail, from Room 1202 at the Daley Center. If you are my client, I can get these for you. If you are not my client, or would prefer to do this yourself, call (312) 603-6558 to confirm the cost of each copy (currently \$2.00 per copy as of 2021) and then mail a check for the appropriate amount, a stamped, self-addressed envelope, and a brief letter explaining your request to: Richard J. Daley Center, Room 1202, Probate Division, 50 W. Washington, Chicago, Illinois 60602. Make the check payable to: Clerk of the Circuit Court. Be sure to mention this matter's file number (e.g., 09 P 1234) on the check and in your written request.

### *X. Final Note*

I hope this letter gives you a clearer picture of your role as Guardian, as of now and as you look into the future. If you are or were a client, or if you knew me as a Guardian ad Litem, feel free to call on me as the need arises. (However, if I was the Guardian ad Litem and you are presently represented by an attorney, then I need your lawyer's permission before I can speak with you.) If we haven't met before, and you would like assistance in a Guardianship matter, I encourage you to contact me for a free consultation.

*The Law Offices of Steve Raminiak, P.C. provide counsel for estate planning and the administration of estates and trusts established for Decedents, Minors and Disabled Persons. Steve regularly tackles contested estates, and has been appointed as Guardian ad Litem, Special Administrator, and as counsel for Disabled Persons by Judges in the Probate Division of the Circuit Court of Cook County.*

*Steve serves as a resource for Chicago Volunteer Legal Services (CVLS) by handling pro bono matters and providing direction to volunteer attorneys. He also contributes to Lawguru.com, a site that offers free answers to legal questions. Steve speaks with groups about estate planning and how to assist elderly or disabled family members with financial and legal issues. He also hosts seminars for lawyers about probate procedures.*